Model Utah Jury Instructions
Second Edition
Working Draft
April 13, 2006

Introduction to the Model Utah Jury Instructions, Second Edition.

The Utah Supreme Court approves this Second Edition of the Model Utah Jury Instructions (MUJI 2d) for use in jury trials. But use of a model instruction is not a guarantee of legal sufficiency. MUJI 2d is a summary statement of Utah law, but it is not a source of law nor the final expression of the law. In the context of any particular case, a model instruction may be amended by the judge and reviewed by the Supreme Court or Court of Appeals.

For civil instructions, MUJI 2d eventually will replace the original MUJI published by the Utah State Bar. As the Supreme Court had no role in publishing the original MUJI, the Court will not take any steps to repeal it. For criminal instructions, MUJI 2d represents the first published compilation of instructions in Utah.

The Supreme Court has two advisory committees, one for civil instructions and one for criminal instructions, working diligently to draft new and amended instructions to conform to developments in the law. MUJI 2d will likely be a continual work in progress, with approved instructions being published periodically on the state court web site. Although there is no comment period for jury instructions as there is for rules, we encourage lawyers and judges to share their experience and suggestions with the advisory committees: experience with these model instructions and with instructions drafted for a trial that are not yet included here.

In an area of the law in which there is no Utah model instruction, the judge must nevertheless instruct the jury. The objective of that task is to further the jurors' understanding of the law and their responsibility though accuracy, clarity and simplicity. Links on this page lead to principles for plain-language drafting and to the pattern instructions of some other jurisdictions.

An accurate statement of the law is critical to instructing the jury, but accuracy is meaningless if the statement is not understood - or is misunderstood - by jurors. MUJI 2d is intended to be an accurate statement of the law using simple structure and, where possible, words of ordinary meaning.

When preparing instructions, judges and lawyers should include the title of the instruction. This information helps jurors organize their deliberation and decision making. Judges and lawyers should also provide a copy of the written instructions to each juror. This is permitted under the Rules of Procedure and is a sound practice because it allows each juror to follow the instructions as they are read and to refer to them during deliberations without disturbing other jurors.

MUJI 2d is drafted without using gender-specific pronouns whenever reasonably possible. However, sometimes the simplest, most direct statement requires using pronouns. MUJI 2d uses masculine pronouns as its protocol. Judges and lawyers may replace these with feminine or impersonal pronouns to fit the circumstances of the case

at hand. Judges and lawyers may also use party names instead of "the plaintiff" or "the defendant." Judges and lawyers may have to change a verb's tense or number to fit the circumstances.

Judges should instruct the jurors at times during the trial when the instruction will most help the jurors. Many instructions historically given at the end of the trial should be given at the beginning or during the trial so that jurors know what to expect. The fact that an instruction is not organized here among the opening instructions does not mean that it cannot be given at the beginning of trial. Judges and lawyers should consider the order and timing of instructions. Instructions relevant to a particular part of the trial should be given just before that part. A judge might repeat an instruction during or at the end of the trial to help protect the integrity of the process or to help the jurors understand the case and their responsibilities.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

CIVIL INSTRUCTIONS

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status.

100. General Instructions.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

101. General admonitions.

You have now been sworn as jurors in this case. I want to impress on you the seriousness of being a juror. You must come to the case without bias and attempt to reach a fair verdict based on the evidence and on the law. Before we begin, I need to explain how to conduct yourselves during the trial.

Do not allow anything that happens outside this courtroom to affect your decision. During the trial do not talk about this case with anyone, including your family, friends, or even your fellow jurors until after I tell you that it is time for you to decide the case. When it is time to decide the case, you will meet in the jury room. You may discuss the case only in the jury room, at the end of the trial, when all of the jurors are present. After the trial is over and I have released you from the jury, you may discuss the case with anyone, but you are not required to do so.

During the trial you must not listen to anyone talk about the case outside this courtroom. Although it is a normal human tendency to talk with other people, do not talk with any of the parties or their lawyers or with any of the witnesses. By this, I mean do not talk with them at all, even to pass the time of day. While you are in the courthouse, the clerk may ask you to wear a badge identifying yourself as a juror so that people will not try to discuss the case with you.

If anyone tries to talk to you about the case, tell that person that you cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and tell the clerk or the bailiff that you need to see me to report the incident. If you must talk to me, do not discuss it with your fellow jurors.

During the trial do not read about the case in the newspapers or on the internet or listen to radio or television broadcasts about the trial. If a headline or an announcement catches your attention, do not read or listen further. Media accounts may be inaccurate or may contain matters that are not evidence.

You must decide this case based only on the evidence presented in this trial and the instructions that I provide. Do not investigate the case or conduct any experiments. Do not do any research on your own or as a group. Do not use dictionaries, the internet, or other reference materials. Do not contact anyone to assist you. Do not visit or view the scene of the events in this case. If you happen to pass by the scene, do not stop or investigate.

Keep an open mind throughout the trial. Evidence can only be presented one piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all of the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

From time to time during the trial I may have to rule on points of law. Do not concern yourselves with the reasons for these rulings. Do not conclude from anything I say that I favor one party or the other, or that I have an opinion about what your verdict should be.

Do not let bias, sympathy, prejudice, or public opinion influence your verdict.

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.

MUJI 1st References.

1.1; 2.4.

References.

CACI 100

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

102. Role of the judge, jury and lawyers.

You and I and the lawyers are all officers of the court, and we play important roles in the trial.

It's my role to supervise the trial and to decide all legal questions, such as deciding objections to evidence and deciding the meaning of the law. I will also instruct you on the law that you must apply.

It's your role to follow that law and to decide what the facts are. The facts generally relate to who, what, when, where, why, how or how much. The facts must be supported by the evidence. Neither the lawyers nor I actually decide the case. That is your role. You should decide the case based upon the evidence presented in court and the instructions that I give you.

It's the lawyers' role to present evidence, generally by calling and questioning witnesses and presenting exhibits. Each lawyer will also try to persuade you to decide the case in favor of his or her client.

Things that you see on television and in the movies may not accurately reflect the way real trials should be conducted. Real trials should be conducted with professionalism, courtesy and civility.

MUJI 1st References.

1.5; 2.2; 2.5; 2.6.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 5/9/2005

103. Nature of the case.

Before the trial of this case begins, I need to give you some instructions to help you understand what you will see and hear.

The party who brings a lawsuit is called the plaintiff. In this case the plaintiff is [name of plaintiff]. The party who is being sued is called the defendant. In this case the defendant is [name of defendant].

[Name of plaintiff] seeks damages on account of [describe claim].

[Name of defendant] [denies liability, etc.].

[Name of defendant] has filed what is known as a [counterclaim/cross-claim/third-party complaint/etc.,] seeking recovery from [name of plaintiff/co-defendant/third party defendant/etc.] for [describe claim].

MUJI 1st References.

1.1.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

104. Order of trial.

The trial will generally proceed as follows:

(1) Opening statements. The lawyers will make opening statements, outlining what the case is about and what they think the evidence will show.

(2) Presentation of evidence. [Name of plaintiff] will offer evidence first, followed by [name of defendant]. The parties may offer more evidence, called rebuttal evidence, after hearing the witnesses and seeing the exhibits.

(3) Instructions on the law. Throughout the trial and after the evidence has been fully presented, I will instruct you on the law that you must apply. You must obey these instructions. You are not allowed to reach decisions that go against the law.

(4) Closing arguments. The lawyers will then summarize and argue the case. They will share with you their views of the evidence, how it relates to the law and how they think you should decide the case.

(5) Jury deliberations. The final step is for you to go to the jury room and discuss the case among yourselves until you reach a verdict. Your verdict must be based on the evidence presented in court and on my instructions on the law. I will give you more instructions about that step at a later time.

MUJI 1st References.

1.2.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

105. Sequence of instructions not significant.

From time to time throughout the trial I will instruct you on the law. The order in which I give the instructions has no significance. You must consider the instructions in their entirety, giving them all equal weight. I do not intend to emphasize any particular instruction, and neither should you.

MUJI 1st References.

2.1.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

106. Jurors must follow the instructions.

The instructions that I give you are the law, and your oath requires you to follow my instructions even if you disagree with them.

MUJI 1st References.

1.5.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

107. Jurors may not decide based on sympathy, passion and prejudice.

You must not decide this case for or against anyone because you feel sorry for anyone or angry at anyone. You must decide this case based on the facts and the law, without regard to sympathy, passion or prejudice.

MUJI 1st References.

2.3.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

108. Note-taking.

If you wish, you may take notes during the trial and have those notes with you when you discuss the case. We will provide you with writing materials if you need them. If you take notes, do not over do it, and do not let your note-taking distract you from following the evidence. Your notes are not evidence, and you should use them only as a tool to aid your personal memory when it comes time to decide the case.

MUJI 1st References.

1.6.

References.

URCP 47(n)

Advisory Committee Notes.

The judge may instruct the jurors on what to do with their notes at the end of each day and at the end of the trial.

Staff Notes.

Status. Approved for use: 6/1/2005

109. Using notes.

In the jury room you may use any notes that you have taken to refresh your memory of what the witnesses said. Remember that your notes are not evidence. Only the testimony of the witnesses and the exhibits received by the court during the trial are evidence.

Each of you must reach your own decision after consultation with the other jurors, and each of you must rely on your own memory of the evidence. One juror's opinion should not be given excessive consideration just because that juror took notes.

MUJI 1st References.

2.20.

References.

Advisory Committee Notes.

Staff Notes.

Status. Changes from 10/18/2004

110. Rules applicable to recesses.

From time to time I will call for a recess. It may be for a few minutes, a lunch break, overnight or longer. You will not be required to remain together while we are in recess. You must obey the following instructions during the recesses:

Do not talk about this case with anyone – not family, friends or even each other. While you are in the courthouse, the clerk may ask you to wear a badge identifying yourself as a juror so that people will not try to discuss the case with you.

If anyone tries to discuss the case in your presence, despite your telling them not to, tell the clerk or the bailiff that you need to see me. If you must talk to me, do not discuss it with your fellow jurors.

Although it is a normal human tendency to talk with other people, do not talk or otherwise communicate with any of the parties or their lawyers or with any witness. By this, I mean do not talk with them at all, even to pass the time of day.

Do not read about the case in the newspapers or on the internet, or listen to radio, television or other broadcasts about the trial. If a headline or announcement catches your attention, do not read or listen further. Media accounts may be inaccurate and may contain matters that are not evidence. You must base your verdict only on the evidence that you see and hear in this courtroom.

Since this case involves an incident that occurred at a particular location, you may be tempted to visit the scene yourself. Do not do so. Before a case comes to trial, changes may have occurred at the location after the event that gives rise to this lawsuit. Also, you might draw the wrong conclusions from an unguided visit without the benefit of explanation. Therefore, even if you happen to live near the location, do not go to it or near it until the case is over.

Finally, do not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case, and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

MUJI 1st References.

1.8; 1.7

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

111. All parties equal before the law.

"Person" means an individual, corporation, organization, or other legal entity. In this case the plaintiff is [identify entity] and the defendant is [identify entity]. This should make no difference to you. You must decide this case as if it were between individuals.

MUJI 1st References.

2.8.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

112. Multiple parties.

There are multiple parties in this case, and each party is entitled to have its claims or defenses considered on their own merits. You must evaluate the evidence fairly and separately as to each plaintiff and each defendant. Unless otherwise instructed, all instructions apply to each plaintiff and to each defendant.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

113. Multiple plaintiffs.

Although there are _____ plaintiffs in this action, that does not mean that they are equally entitled to recover or that any of them is entitled to recover. [Name of defendant] is entitled to a fair consideration of his defense against each plaintiff, just as each plaintiff is entitled to a fair consideration of his claim against [name of defendant].

MUJI 1st References.

2.21.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

114. Multiple defendants.

Although there are _____ defendants in this action, that does not mean that they are equally liable or that any of them is liable. Each defendant is entitled to a fair consideration of his defense against each of [name of plaintiff]'s claims. If you conclude that one defendant is liable, that does not necessarily mean that one or more of the other defendants are liable.

MUJI 1st References.

2.22.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

115. Settling parties.

[Name of parties] have reached a settlement agreement in this case.

There are many reasons why parties settle during the course of a lawsuit. A settlement does not mean that any party has conceded anything. You must still decide which party or parties, including [name of settling parties], were at fault and how much fault each party should bear. In deciding how much fault should be allocated to each party, you must not consider the settlement agreement as a reflection of the strengths or weaknesses of any party's positions.

You may consider the settlement in deciding how believable a witness is.

MUJI 1st References.

2.24.

References.

Slusher v. Ospital, 777 P.2d 437 (Utah 1989).
Paulos v. Covenant Transp., Inc., 2004 UT App 35 (Utah App. 2004).
Child v. Gonda, 972 P.2d 425 (Utah App. 1998).
URE 408.

Advisory Committee Notes.

The judge and the parties must decide whether the fact of settlement and to what extent the terms of the settlement will be revealed to the jury in accordance with the principles set forth in Slusher v. Ospital, 777 P.2d 437 (Utah 1989).

Staff Notes.

Status. Approved for use: 6/1/2005

116. Discontinuance as to some defendants.

[Name of defendant] is no longer involved in this case because [explain reasons]. But you must still decide whether fault should be allocated to [name of defendant] as if he were still a party.

MUJI 1st References.

2.23.

References.

Advisory Committee Notes.

This instruction should be given at the time the party is dismissed. The court should explain the reasons why the defendants have been dismissed to the extent possible. If allocation of fault to the dismissed party is not appropriate under applicable law the final sentence should not be given.

Staff Notes.

Do the instruction and comparative fault statute include breach of contract?

Status. Approved for use: 6/1/2005

117. Preponderance of the evidence.

When I tell you that a party has the burden of proof or that a party must prove something by a "preponderance of the evidence," I mean that the party must persuade you, by the evidence presented in court, that the fact is more likely to be true than not true.

You may have heard that in a criminal case proof must be beyond a reasonable doubt, but I must emphasize to you that this is not a criminal case. In a civil case such as this one, a different level of proof applies: proof by a preponderance of the evidence.

Another way of saying this is proof by the greater weight of the evidence, however slight. Weighing the evidence does not mean counting the number of witnesses nor the amount of testimony. Rather, it means evaluating the persuasive character of the evidence. In weighing the evidence, you should consider all of the evidence that applies to a fact, no matter which party presented it. The weight to be given to each piece of evidence is for you to decide.

After weighing all of the evidence, if you decide that a fact is more likely true than not, then you must find that the fact has been proved. On the other hand, if you decide that the evidence regarding a fact is evenly balanced, then you must find that the fact has not been proved.

[Now] [At the close of the trial] I will instruct you in more detail about the specific elements that must be proved.

MUJI 1st References.

2.16; 2.18.

References.

Johns v. Shulsen, 717 P.2d 1336 (Utah 1986)
Morris v. Farmers Home Mut. Ins. Co., 500 P.2d 505 (Utah 1972).
Alvarado v. Tucker, 268 P.2d 986 (Utah 1954).
Hansen v. Hansen, 958 P.2d 931 (Utah App. 1998)

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

118. Clear and convincing evidence.

Some facts in this case must be proved by a higher level of proof called "clear and convincing evidence." When I tell you that a party must prove something by clear and convincing evidence, I mean that the party must persuade you, by the evidence presented in court, to the point that there remains no serious or substantial doubt as to the truth of the fact.

Proof by clear and convincing evidence requires a greater degree of persuasion than proof by a preponderance of the evidence but less than proof beyond a reasonable doubt.

I will tell you specifically which of the facts must be proved by clear and convincing evidence.

MUJI 1st References.

2.19.

References.

Jardine v. Archibald, 279 P.2d 454 (Utah 1955).
Greener v. Greener, 212 P.2d 194 (Utah 1949).
See also, Kirchgestner v. Denver & R.G.W.R. Co., 233 P.2d 699 (Utah 1951).

Advisory Committee Notes.

In giving the instruction on clear and convincing evidence, the judge should specify which elements must be held to this higher standard. This might be done in an instruction and/or as part of the verdict form. If the judge gives the clear and convincing evidence instruction at the start of the trial and for some reason those issues do not go to the jury (settlement, directed verdict, etc.) the judge should instruct the jury that those matters are no longer part of the case.

Staff Notes.

Status. Approved for use: 2/14/2005

119. Evidence.

"Evidence" is anything that tends to prove or disprove a disputed fact. It can be the testimony of a witness or documents or objects or photographs or stipulations or certain qualified opinions or any combination of these things.

You must entirely disregard any evidence for which I sustain an objection and any evidence that I order to be struck.

Anything you may have seen or heard outside the courtroom is not evidence and you must entirely disregard it. Do not make any investigation about the facts in this case. Do not make any personal inspections, observations or experiments. Do not view locations involved in the case, or inspect any things or articles not produced in court. Do not look things up on the internet. Do not look for information in books, dictionaries or public or private records that are not produced in court. Do not let anyone else do any of these things for you.

Do not consider anything that you may have heard or read about this case in the media or by word of mouth or other out-of-court communication.

The lawyers might stipulate to a fact or I might take judicial notice of a fact. Otherwise, what I say and what the lawyers say usually are not evidence.

You are to consider only the evidence in the case, but you are not expected to abandon your common sense. You are permitted to interpret the evidence in light of your experience.

MUJI 1st References.

1.3; 2.4.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

120. Direct and circumstantial evidence.

A fact may be proved by direct or circumstantial evidence. Circumstantial evidence consists of facts or circumstances that allow someone to reasonably infer the truth of the facts to be proved. For example, if the fact to be proved is whether Johnny ate the cherry pie, and a witness testifies that she saw Johnny take a bite of the cherry pie, that is direct evidence of the fact. If the witness testifies that she saw Johnny with cherries smeared on his face and an empty pie plate in his hand, that is circumstantial evidence of the fact.

MUJI 1st References.

2.17.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

121. Believability of witnesses.

Testimony in this case will be given under oath. You must evaluate the believability of that testimony. You may believe all or any part of the testimony of a witness. You may also believe one witness against many witnesses or many against one, in accordance with your honest convictions. In evaluating the testimony of a witness, you may want to consider the following:

(1) Personal interest. Do you believe the accuracy of the testimony was affected one way or the other by any personal interest the witness has in the case?

(2) Bias. Do you believe the accuracy of the testimony was affected by any bias or prejudice?

(3) Demeanor. Is there anything about the witness's appearance, conduct or actions that causes you to give more or less weight to the testimony?

(4) Consistency. How does the testimony tend to support or not support other believable evidence that is offered in the case?

(5) Knowledge. Did the witness have a good opportunity to know what he or she is testifying about?

(6) Memory. Does the witness's memory appear to be reliable?

(7) Reasonableness. Is the testimony of the witness reasonable in light of human experience?

These considerations are not intended to limit how you evaluate testimony. You are the ultimate judges of how to evaluate believability.

MUJI 1st References.

2.9.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

122. Inconsistent statements.

You may believe that a witness, on another occasion, made a statement inconsistent with that witness's testimony given here. That doesn't mean that you are required to disregard the testimony. It is for you to decide whether to believe the witness.

MUJI 1st References.

2.10.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

123. Effect of willfully false testimony.

If you believe any witness has intentionally testified falsely about any important matter, you may disregard the entire testimony of that witness, or you may disregard only the intentionally false testimony.

MUJI 1st References.

2.11.

References.

Gittens v. Lundberg, 3 Utah 2d 392, 284 P.2d 1115 (1955).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

124. Stipulated facts.

A stipulation is an agreement. Unless I instruct you otherwise, when the lawyers on both sides stipulate or agree to a fact, you must accept the stipulation as evidence and regard that fact as proved.

The parties have stipulated to the following facts:

[Here read stipulated facts.]

Since the parties have agreed on these facts, you must accept them as true for purposes of this case.

MUJI 1st References.

1.3; 1.4

References.

Advisory Committee Notes.

This instruction should be given at the time a stipulated fact is entered into the record.

Staff Notes.

Status. Approved for use: 6/1/2005

125. Judicial notice.

I have taken judicial notice of [state the fact] for purposes of this trial. This means that you must accept the fact as true.

MUJI 1st References.

1.3.

References.

Advisory Committee Notes.

This instruction should be given at the time the court takes judicial notice of a fact.

Staff Notes.

Status. Approved for use: 6/1/2005

126. Depositions.

Depositions may be received in evidence. Depositions contain sworn testimony of a witness that was given previously, outside of court, with the lawyer for each party being entitled to ask questions. Testimony provided in a deposition may be read to you in court or may be seen on a video monitor. You should consider deposition testimony the same way that you would consider the testimony of a witness testifying in court.

MUJI 1st References.

2.12.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

127. Limited purpose evidence.

Some evidence is received for a limited purpose only. When I instruct you that an item of evidence has been received for a limited purpose, you must consider it only for that limited purpose and for no other purpose.

MUJI 1st References.

1.3.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

128. Objections and rulings on evidence and procedure.

From time to time during the trial, I may have to make rulings on objections or motions made by the lawyers. Lawyers on each side of a case have a right to object when the other side offers evidence that the lawyer believes is not admissible. You should not think less of a lawyer or a party because the lawyer makes objections. You should not conclude from any ruling or comment that I make that I have any opinion about the merits of the case or that I favor one side or the other. And if I sustain an objection to a question, you should not draw any conclusions from the question itself.

During the trial I may have to confer with the lawyers out of your hearing about questions of law or procedure. Sometimes you may be excused from the courtroom for that same reason. I will try to limit these interruptions as much as possible, but you should remember the importance of the matter you are here to decide. Please be patient even though the case may seem to go slowly.

MUJI 1st References.

2.5.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

129. Statement of opinion.

Under limited circumstances, I will allow a witness to express an opinion. You do not have to believe an opinion, whether or not it comes from an expert witness. Consider opinion testimony as you would any other evidence, and give it the weight you think it deserves.

MUJI 1st References.

2.13; 2.14.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

130. Charts and summaries.

Certain charts and summaries will be shown to you in order to help explain the evidence. However, the charts or summaries are not in and of themselves evidence. If the charts or summaries correctly reflect facts or figures shown by the evidence, you may consider them.

MUJI 1st References.

2.15.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

131. Selection of foreperson and deliberation.

After you enter the jury room, and before discussing the case, you must select one of your members to serve as foreperson.

The foreperson will preside over your deliberations and sign the verdict form when it's completed.

The foreperson should not dominate the jury or the discussions. The foreperson's opinions should be given the same weight as the opinions of each of the other members of the jury.

After you select the foreperson it is your duty to consult with one another - to deliberate - with a view to reaching an agreement.

Your attitude and conduct during discussions are extremely important. As you begin your discussions, it is not helpful to say that your mind is already made up. Do not announce that you are determined to vote a certain way or that your mind cannot be changed. Each of you must decide the case for yourself, but only after discussing the case with your fellow jurors. You should not hesitate to change an opinion when convinced that it is wrong. Likewise, you should not surrender your honest convictions just to end the deliberations or to agree with other jurors.

MUJI 1st References.

2.7; 2.25; 2.28.

References.

Advisory Committee Notes.

Staff Notes.

Status. Changes from 10/18/2004

132. Do not resort to chance.

Your duty as a juror is to evaluate the evidence presented by the parties and to come to a decision that is supported by the evidence. For example, you cannot make a decision by flipping a coin, speculating or choosing one juror's opinions at random.

If you decide that a party is entitled to recover damages, then you must decide the amount of money to be awarded to that party. Each of you should express your own independent judgment of what the amount should be. It is your duty to thoughtfully consider the amounts suggested, evaluate them according to these instructions and the evidence and come to an agreement on the amount to be awarded. You may not agree in advance to average the independent estimates of each juror.

MUJI 1st References.

2.26.

References.

Advisory Committee Notes.

Staff Notes.

Status. Changes from 10/18/2004

133. Verdict form. Agreement on verdict.

I am going to give you a form called the verdict form. You must answer the questions on the form, based upon my instructions and the evidence you have seen and heard during this trial.

Because this is not a criminal case, your verdict does not have to be unanimous. But at least six jurors must agree on the answer to each question, although they need not be the same six jurors on each question. As soon as six or more of you have agreed on the answer to each question, the foreperson should sign and date the form and tell the Bailiff that you have finished. When the Bailiff escorts you back to the courtroom, you should bring the completed verdict form with you.

You must answer the following questions on the verdict form:

[Read questions from verdict form]

I will now explain to you what these questions mean, and what you must decide in order to answer them.

MUJI 1st References.

2.27.

References.

Advisory Committee Notes.

Staff Notes.

Status. Changes from 10/18/2004

200. Negligence.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

201. "Fault" defined.

Your goal as jurors is to decide whether [name of plaintiff] was harmed and, if so, whether anyone is at fault for that harm. If you decide that more than one person is at fault, you must then allocate fault among them.

Fault means any wrongful act or failure to act that causes harm to the person seeking recovery. The wrongful act or failure to act alleged in this case is [negligence, etc.]

Your answers to the questions on the verdict form will determine whether anyone is at fault. We will review the verdict form in a few minutes.

MUJI 1st References.

3.1.

References.

Utah Code Sections 78-27-37(2); 78-27-38; 78-27-40.
Bishop v. GenTec, 2002 UT 36.
Haase v. Ashley Valley Medical Center, 2003 UT App 260.
Biswell v. Duncan, 742 P.2d 80, (Utah App. 1987).

Advisory Committee Notes.

Fault under the Comparative Negligence Act includes negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

This instruction should be followed by those defining the specific duty (for example, negligence), the instruction on cause, and the instruction on allocating fault.

The court and counsel must set forth the appropriate alleged act or failure to act that is claimed to constitute a breach of legal duty.

Staff Notes.

Status. Approved for use: 6/1/2005

202. "Negligence" defined.

You must decide whether [names of persons on the verdict form] were negligent.

Negligence means that a person did not use reasonable care. We all have a duty to use reasonable care to avoid injuring others. Reasonable care is simply what a reasonably careful person would do in a similar situation. A person may be negligent in acting or in failing to act.

The amount of care that is reasonable depends upon the situation. Ordinary circumstances do not require extraordinary caution. But some situations require more care because a reasonably careful person would understand that more danger is involved.

MUJI 1st References.

3.2; 3.5; 3.6.

References.

Dwiggins v. Morgan Jewelers, 811 P.2d 182 (Utah 1991)
Mitchell v. Pearson Enterprises, 697 P.2d 240 (Utah 1985).
Meese v. BYU, 639 P.2d 720 (Utah 1981).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

203. "Negligence" defined. Person with disability.

You must decide whether [names of persons on the verdict form] were negligent.

Negligence means that a person did not use reasonable care. We all have a duty to use reasonable care to avoid injuring others. Reasonable care is simply what a reasonably careful person would do in a similar situation. A person may be negligent in acting or in failing to act.

[Name of person] has a physical disability. A person with a physical disability is held to the same standard of care as a person without that disability. However, you may consider [name of person]'s disability among all of the other circumstances when deciding whether his conduct was reasonable. In other words, a physically disabled person must use the care that a reasonable person with a similar disability would use in a similar situation.

The amount of care that is reasonable depends upon the situation. Ordinary circumstances do not require extraordinary caution. But some situations require more care because a reasonably careful person would understand that more danger is involved.

MUJI 1st References.

3.2; 3.5; 3.6.

References.

Mitchell v. Pearson Enters., 697 P.2d 240 (Utah 1985).
Meese v. BYU, 639 P.2d 720 (Utah 1981).

Advisory Committee Notes.

The standard of care for the physically disabled should be distinguished from the standard for the mentally disabled. Under Restatement 2d Torts § 283C "[i]f the actor is ill or otherwise physically disabled, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable man under the disability." This is not necessarily a diminished standard, but is subjective in that a party's circumstances, i.e. their physical disability, must be considered in determining whether the actor breached the standard of care.

However, a different approach exists for the mentally disabled. Under Restatement 2d Torts § 283B "[u]nless the actor is a child, his insanity or other mental deficiency does not relieve the actor from liability for conduct which does not conform to the standard of a reasonable man under like circumstances." Cited in Birkner v. Salt Lake County, et al., 771 P.2d 1053 (Utah 1989). While Birkner also appears to create a

distinction in cases involving either "primary" or comparatively negligent mentally impaired actors, the distinction is factually specific and appears limited to the narrow context of conduct between a therapist and a patient with limited mental impairment. Id. at 1060.

Staff Notes.

Status. Approved for use: 6/1/2005

204. Care required when children are present.

An adult must anticipate the ordinary behavior of children. An adult must be more careful when children are present than when only adults are present.

MUJI 1st References.

3.7.

References.

Kilpack v. Wignall, 604 P.2d 462 (Utah 1979).
Vitale v. Belmont Springs, 916 P2d 359 (Utah App. 1996). (It is improper to give this instruction if the child is older than fourteen.)

Advisory Committee Notes.

This instruction should be used where there is evidence that a person knew or should have known that young children would be present. It is not intended to create a new duty to anticipate the presence of children.

Staff Notes.

Status. Approved for use: 4/11/2005

205. Care required by children.

You must decide whether a child aged _____ was negligent. A child is not judged by the adult standard. Rather, a child is negligent if he does not use the amount of care that is ordinarily used by children of similar age, intelligence, knowledge or experience in similar circumstances.

MUJI 1st References.

References.

Donohue v. Rolando, 16 Utah 2d 294, 296-297, 400 P.2d 12,14 (1965).
Restatement 2d Torts § 283A (1965).
Restatement 3d Torts § 8 (1999).

Advisory Committee Notes.

This instruction should not be given if the child is engaged in an 'adult' activity. See Summerill v. Shipley, 890 P.2d 1042, 1044 (Utah Ct. App. 1995).

It is unclear whether this instruction should be given if the child is less than seven years old. In S.H. By and Through Robinson v. Bistryski, the Utah Supreme Court states that children under the age of seven are legally incapable of negligence. 923 P.2d 1376, 1382 (Utah 1996)(citing Nelson v. Arrowhead Freight Lines Ltd., 104 P.2d 225, 228 (Utah 1940)). However, given the backdrop of additional Utah case law (such as Donohue v. Rolando, in which the minor was less that seven) that is not addressed by Bistryski, combined with its factually-specific nature, it is unclear whether a presumption that children under seven years old are wholly incapable of negligence exists in Utah.

Staff Notes.

Status. Approved for use: 4/11/2005

206. Care required for a child participating in an adult activity.

A child participating in an adult activity, such as operating a motor vehicle, is held to the same standard of care as an adult.

MUJI 1st References.

References.

Summerill v. Shipley, 890 P.2d 1042, 1044 (Utah App. 1995).

Advisory Committee Notes.

Before giving this instruction the judge should make the preliminary decision whether an activity is an adult activity.

Staff Notes.

Status. Approved for use: 1/10/2005

207. Abnormally dangerous activity.

I have determined that [name of defendant]'s activity was abnormally dangerous. One who carries on an abnormally dangerous activity is liable for harm caused by that activity whether or not he exercised reasonable care.

MUJI 1st References.

3.8.

References.

Walker Drug Co., Inc. v. La Sal Oil Co., 902 P.2d 1229, 1233 (Utah 1995).
Branch v. Western Petroleum, 657 P.2d 267, 273 (Utah 1982).
Robison v. Robison, 394 P.2d 87, 877 (Utah 1964).
Restatement 2d Torts §520 (1976).
Restatement 3d Torts §20 (Tentative Draft No. 1).

Advisory Committee Notes.

Comment "l" to Section 520 of the First and Second Restatements indicates that the determination of whether an activity qualifies as "abnormally" dangerous is for the court, not the jury. However, there are courts that allow the jurors to weigh the factors and make the decision for themselves. See cases cited in Comment "l" to Restatement 3d Torts §20.

In Walker Drug Co., Inc. v. La Sal Oil Co., supra, the Utah Supreme Court adopted the factors set forth in the Second Restatement:
(a) existence of a high degree of risk of some harm to the person or property of others;
(b) likelihood that the harm that results from it will be great;
(c) inability to eliminate the risk by the exercise of reasonable care;
(d) extent to which the activity is not of common usage;
(e) inappropriateness of the activity to the place where it is carried on; and
(f) extent to which its value to the community is outweighed by its dangerous attributes.

Staff Notes.

Status. Approved for use: 5/9/2005

208. Care required in controlling electricity.

Power companies and others who control power lines and power stations must use extra care to prevent people and their equipment from coming in contact with high-voltage electricity. The greater the danger, the greater the care that must be used.

MUJI 1st References.

3.9.

References.

Lish v. Utah Power & Light Co., 493 P.2d 611 (Utah 1972).
Brigham v. Moon Lake Elec. Ass'n, 470 P.2d 393 (Utah 1970).
See also, Burningham v. Utah Power & Light, 76 F. Supp. 2d 1243 (D. Utah 1999) (no duty owed to trespasser on power pole.)

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 4/11/2005

209. "Cause" defined.

I've instructed you before that the concept of fault includes a wrongful act or failure to act that causes harm.

As used in the law, the word "cause" has a special meaning, and you must use this meaning whenever you apply the word. "Cause" means that:

(1) the person's act or failure to act produced the harm directly or set in motion events that produced the harm in a natural and continuous sequence;

and

(2) the person's act or failure to act could be foreseen by a reasonable person to produce a harm of the same general nature.

There may be more than one cause of the same harm.

MUJI 1st References.

3.13; 3.14; 3.15.

References.

Steffensen v. Smith's Management Corp., 862 P.2d 1342 (Utah 1993).
Rees v. Albertson's, Inc., 587 P.2d 130 (Utah 1978).

Advisory Committee Notes.

The term "proximate" cause should be avoided. While its meaning may be understood by lawyers, the lay juror may be unavoidably confused by the similarity of "proximate" to "approximate." The committee also rejected "legal cause" because jurors, looking for fault, may look only for "illegal" causes. Charrow, Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions (1979) 79 Colum.L.Rev. 1306.

The Utah Code includes "proximate" cause in its definition of "fault" in Section 78-27-37, but did not define the term. We intend to simplify the description of the traditional definition, but not change the meaning.

In Mitchell v. Gonzales, 819 P.2d 872 (Cal. 1991), the supreme court of California held that use of the so-called "proximate cause" instruction, which contained the "but for" test of cause in fact, constituted reversible error and should not be given in California negligence actions. The court determined, using a variety of scientific studies, that this instruction may improperly lead jurors to focus on a cause that is spatially or

temporally closest to the harm and should be rejected in favor of the so-called "legal cause" instruction, which employs the "substantial factor" test of cause in fact. CACI 430 reflects this adjustment in the law; embracing the "substantial factor" test and abandoning the term "proximate cause."

Recognizing additional studies of the confusion surrounding "legal cause," the court also recommended that "the term 'legal cause' not be used in jury instructions; instead, the simple term 'cause' should be used, with the explanation that the law defines 'cause' in its own particular way." Id., at 879 (citation omitted). These recommendations have since been integrated into the California jury instructions.

Staff Notes.

Status. Approved for use: 6/1/2005

210. Superseding cause.

[Name of defendant] claims that he is relieved from liability because the later act of [name of person] caused [name of plaintiff]'s harm.

If [name of defendant]'s negligent conduct creates or increases the risk of a particular harm and is a substantial factor in causing that harm, [name of defendant] remains liable, unless he proves that [name of person] intentionally [negligently] caused the harm and that the harm was not within the scope of the risk created by his conduct.

The fact that the final act that caused [name of plaintiff]'s harm was [name of person]'s act does not relieve [name of defendant] from liability unless [name of person]'s act was unforeseeable and may be described with the benefit of hindsight as extraordinary.

MUJI 1st References.

3.16.

References.

Mitchell v. Pearson Enterprises, 697 P.2d 240 (Utah 1985).
Bansanine v. Bodell, 927 P.2d 675 (Utah App. 1996).
Steffensen v. Smith's Management Corp., 820 P.2d 482, 488 (Utah App. 1991), aff'd, 862 P.2d 1342 (Utah 1993).
Restatement 2d Torts, 1965 §442B.

Advisory Committee Notes.

The Committee drafted the second paragraph in the alternative because parts of the law on superceding cause are unclear. What is well established is that for a subsequent act to break the chain of causation and be a superseding cause, the subsequent act must be unforeseeable. Further, to cut off the defendant's liability, the harm must be outside the scope of the risk created by the defendant's conduct. If the "general nature" of the harm is foreseeable, the defendant remains liable. Steffensen v. Smith's Management Corp., 862 P.2d 1342, 1346 (Utah 1993) As a concurrent contributing factor, the third person's acts would be analyzed under the Liability Reform Act, Utah Code section 78-27-37, et seq.

What is not as clear is whether the third person's act must be an intentional act or whether negligence is sufficient. Bansanine v. Bodell, 927 P.2d 675, 677 (Utah App. 1996) adopts the Restatement position, and this is reflected in the first alternative. To relieve the defendant of liability, the third person must not only act intentionally, the actor's intent must be to harm the plaintiff. This position is supported by reasoning that the doctrine of superseding cause has no role after the Liability Reform Act, at least for

analyzing unintentional acts. If the cause of action is based on an unintentional act, the LRA operates to allocate fault. In an appropriate case, the jury might find that a subsequent actor bears 100% of the fault. The applicability of the LRA to intentional acts is an open question. See Jedrziewski v. Smith, 2005 UT 85.

In cases preceding the LRA, the court states that a negligent act, if it meets the other requirements, can be found to be a superceding cause of plaintiff's harm, thereby cutting off the defendant's liability rather than allocating his fault under the LRA. See Godesky v. Provo City Corp., 690 P.2d 541, 544 (Utah 1984), Jensen v. Mountain States Telephone & Telegraph Co., 611 P.2d 363, 365 (Utah 1980), and, subsequent to the LRA, Steffensen v. Smith's Management Corp., 820 P.2d 482, 488 (Utah Ct. App. 1991) aff'd, 862 P.2d 1342 (Utah 1993). The continued validity of this principle is an open question.

Staff Notes.

Should the citation to Mitchell be stricken?

Status.

211. Allocation of fault.

If you decide that more than one person is at fault, you must decide each person's percentage of fault. This allocation of fault must be done on a percentage basis, and must total 100%. Each person's percentage should be based upon how much that person's fault contributed to the harm.

You may also decide to allocate a percentage of fault to the plaintiff. [Name of plaintiff]'s total recovery will be reduced by the percentage of fault that you attribute to him. If you decide that [name of plaintiff]'s fault is 50% or greater, [name of plaintiff] will recover nothing.

When you answer the questions on damages, do not reduce the award by [name of plaintiff]'s percentage of fault. I will make that calculation later.

MUJI 1st References.

3.1; 3.17; 3.19.

References.

Utah Code Sections 78-27-37(2); 78-27-38; 78-27-40.
Bishop v. GenTec, 2002 UT 36.
Haase v. Ashley Valley Medical Center, 2003 UT App 260.
Biswell v. Duncan, 742 P.2d 80, (Utah App. 1987).

Advisory Committee Notes.

“Fault” under the Comparative Negligence Act includes negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product. The applicability of the LRA to intentional acts is an open question. See Jedrziewski v. Smith, 2005 UT 85.

The judge should ensure that the verdict form is written so that fault is allocated only among those parties for whom the jury finds both breach of duty and cause.

Staff Notes.

Status. Approved for use: 6/1/2005

212. Violation of a safety law.

Violation of a safety law is evidence of negligence unless the violation is excused. [name of plaintiff] claims that [name of defendant] violated a safety law that says:

[Summarize or quote the statute, ordinance or rule.]

If you decide that [name of defendant] violated this safety law, you must decide whether the violation is excused.

[Name of defendant] claims the violation is excused because:

(1) Obeying the law would have created an even greater risk of harm.
(2) He could not obey the law because he faced an emergency that he did not create.
(3) He was unable to obey the law despite a reasonable effort to do so.
(4) He was incapable of obeying the law.
(5) He was incapable of understanding what the law required.

If you decide that [name of defendant] violated the safety law and that the violation was not excused, you may consider the violation as evidence of negligence. If you decide that [name of defendant] did not violate the safety law or that the violation should be excused, you must disregard the violation and decide whether [name of defendant] acted with reasonable care under the circumstances.

MUJI 1st References.

3.11.

References.

Child v. Gonda, 972 P.2d 425 (Utah 1998).
Hall v. Warren, 692 P.2d 737 (Utah 1984).
Intermountain Farmers Ass'n v. Fitzgerald, 574 P.2d 1162 (Utah 1978).
Thompson v. Ford Motor Co., 16 Utah 2d 30; 395 P.2d 62 (1964).
Gaw v. State ex rel. Dep't of Transp., 798 P.2d 1130 (Utah App. 1990).
Jorgensen v. Issa, 739 P.2d 80 (Utah App. 1987).

Advisory Committee Notes.

Before giving this instruction, the judge should decide whether the safety law applies. The safety law applies if:
(1) the plaintiff belongs to a class of people that the law is intended to protect; and
(2) the law is intended to protect against the type of harm that occurred as a result of the violation.

The judge should include the instruction on excused violations only if there is evidence to support an excuse and include only those grounds for which there is evidence.

Staff Notes.

Status. Approved for use: 6/1/2005

300. Professional Liability: Medical. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

400. Professional Liability: Lawyers and Accountants. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

500. Professional Liability: Architects and Engineers. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

600. Motor Vehicles. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

700. Railroad Crossings. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

800. Common Carriers. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

900. Federal Employer's Liability Act. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

1000. Product Liability. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

1100. Premises Liability. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

1200. Trespass and Nuisance. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

1300. Civil Rights. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

1400. Economic Interference. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

1500. Emotional Distress. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

1600. Defamation. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

1700. Assault, Malicious Prosecution, False Arrest and Abuse of Process. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

1800. Fraud and Deceit. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

1900. Employer and employee rights.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

1901. Definition of employment contract.

A contract of employment is an agreement, express or implied, by which one person, called the employer, engages another person, called the employee, to do something for the benefit of the employer or a third person for which the employee is to receive compensation. The contract may be written or oral. An oral contract is as valid and enforceable as a written contract.

MUJI 1st References.

18.1.

References.

Cook v. Zion's First National Bank, 919 P.2d 56 (Utah App. 1996).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 1/9/2006

1902. Creation of express employment contract. Burden of proof.

An express employment contract is created when the employer and employee agree with one another that they are entering into a contract setting forth the terms on which the employer will employ the employee. The party seeking to establish the existence of an express contract has the burden of proving its terms.

MUJI 1st References.

18.2.

References.

Berube v. Fashion Centre, Ltd., 771 P.2d 1033, 1044 (Utah 1989).
Cook v. Zion's First National Bank, 919 P.2d 56, 59-60 (Utah App. 1996).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 1/9/2006

1903. Creation of implied employment contract. Elements of proof.

An implied employment contract is created when:

(1) the employer intended that the employee's employment would include [describe terms in dispute]; and

(2) the employer communicated its intent to the employee; and

(3) the communication was sufficiently clear and definite to create a reasonable belief by the employee that his employment would include [describe terms in dispute].

The party seeking to establish the existence of an implied contract has the burden of proving these things. Evidence may be derived from the employment manuals, oral statements, the conduct of the parties, announced personnel policies, practices of a particular trade or industry, and other circumstances. However, an implied contract cannot contradict a written contract term.

MUJI 1st References.

18.5; 18.6; 18.7.

References.

Hodgson v. Bunzl Utah, Inc., 844 P.2d 331 (Utah 1992).
Sanderson v. First Security Leasing Co., 844 P.2d 303 (Utah 1992).
Johnson v. Morton Thiokol, Inc., 818 P.2d 997 (Utah 1991).
Arnold v. B.J. Titan Services Co., 783 P.2d 541 (Utah 1989).
Berube v. Fashion Centre, Ltd., 771 P.2d 1033, 1044, 1044-45 (Utah 1989).
Rio Algom Corp. v. Jimco Ltd., 618 P.2d 497, 505 (Utah 1980).
Gilmore v. Community Action Program, 775 P.2d 940, 942 (Utah App. 1989).
Johnson v. Kimberly Clark Worldwide, Inc., 86 F. Supp. 2d 1119, 1121 (D. Utah 2000).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 1/9/2006

1904. Breach of employment contract.

An employment contract is breached if a party does not comply with a provision of the contract.

MUJI 1st References.

18.9.

References.

Lowe v. Sorensen Research Co., 779 P.2d 668, 670 (Utah 1989).
Sanderson v. First Security Leasing Co., 844 P.2d 303, 306-07 (Utah 1992).
Berube v. Fashion Centre, Ltd., 771 P.2d 1033, 1044-45 (Utah 1989).
Cook v. Zion's First National Bank 919 P.2d 56, 59-60 (Utah App. 1996).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 1/9/2006

1905. Employment contract may be terminated "at-will."

You must decide whether the employment was an "at-will" relationship. An employment relationship is presumed to be "at-will" if the employment is for an unspecified time and without other restrictions on either the employer's or the employee's ability to terminate the relationship. When the employment relationship is "at will" there does not have to be any reason for the termination other than the employer's or the employee's desire to discontinue the employment relationship. It may be terminated at any time, for any reason or for no reason, with or without cause. [However, it may not be terminated for an illegal reason.]

MUJI 1st References.

18.3.

References.

Ryan v. Dan's Food Stores, Inc., 972 P.2d 395, 400 (Utah 1998).
Fox v. MCI, 931 P.2d 857, 859 (Utah 1997).
Johnson v. Morton Thiokol, 818 P.2d 997 (Utah 1991).
Brehany v. Nordstrom, 812 P.2d 49 (Utah 1991).
Hodges v. Gibson Product Co., 811 P.2d 151 (Utah 1991).
Caldwell v. Ford, Bacon & Davis Utah, Inc., 777 P.2d 43 (Utah 1989).
Berube v. Fashion Centre Ltd., 771 P.2d 1033 (Utah 1989).
Rose v. Allied Development Co., 719 P.2d 83 (Utah 1986).
Bihlmaier v. Carson, 603 P.2d 790 (Utah 1972).
Held v. American Linen Supply Co., 307 P.2d 210 (Utah 1957).
Rackley v. Fairview Care Centers, Inc., 970 P.2d 277, 280 (Utah App. 1998).

Advisory Committee Notes.

The bracketed sentence should be used only if there is evidence to support a claim for termination for an illegal reason.

Staff Notes.

Status. Approved for use: 1/9/2006

1906. Rebutting the "at-will" presumption.

An employee may defeat the presumption that his employment may be terminated at will by establishing that:

(1) there is an express or implied agreement that the employment relationship may be terminated only for cause or upon satisfaction of another agreed-upon condition; or

(2) the termination violated clear and substantial public policy; or

(3) a statute limits the employer's right to terminate the employee.

MUJI 1st References.

18.4.

References.

Burton v. Exam Center Industrial & General Medical Clinic, Inc., 994 P.2d 1261, 1264 (Utah 2000).
Ryan v. Dan's Food Stores, Inc., 972 P.2d 395, 400 (Utah 1998).
Fox v. MCI Communications, Corp., 931 P.2d 857, 859 (Utah 1997).
Hodgson v. Bunzl Utah, Inc., 844 P.2d 331 (Utah 1992).
Sanderson v. First Security Leasing Co., 844 P.2d 303 (Utah 1992).
Johnson v. Morton Thiokol, Inc., 818 P.2d 997 (Utah 1991).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 2/13/2006

1907. Rebutting the "at-will" presumption. Express or implied agreement.

To prove that the employment relationship was other than at-will, the employee must show that the parties expressly or impliedly intended to alter the at-will relationship.

This requires the employee to establish that:

(1) the employer communicated its intent to the employee that the employee's employment would not be terminated

(a) except for certain conduct,
(b) until after a certain time period, or
(c) unless applicable procedures were followed;

and

(2) the communication was sufficiently clear and definite to create a reasonable belief by the employee that his employment could not be terminated "at-will."

MUJI 1st References.

18.5; 18.6.

References.

Hodgson v. Bunzl Utah, Inc., 844 P.2d 331 (Utah 1992).
Sanderson v. First Security Leasing Co., 844 P.2d 303 (Utah 1992).
Johnson v. Morton Thiokol, Inc., 818 P.2d 997 (Utah 1991).
Arnold v. B.J. Titan Services Co., 783 P.2d 541, 543-44 (Utah 1989).
Gilmore v. Community Action Program, 775 P.2d 940, 942 (Utah App. 1989).
Johnson v. Kimberly Clark Worldwide, Inc., 86 F. Supp. 2d 1119, 1121 (D. Utah 2000).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 2/13/2006

1908. Rebutting the "at-will" presumption. Intent of the parties.

In deciding whether the parties intended to create an employment contract that could not be terminated at will, you must consider all of the circumstances of the employment. [Evidence may be derived from the employment manuals, oral statements, the conduct of the parties, announced personnel policies, practices of a particular trade or industry, and other circumstances.]

MUJI 1st References.

18.5; 18.6.

References.

Hodgson v. Bunzl Utah, Inc., 844 P.2d 331 (Utah 1992).
Sanderson v. First Security Leasing Co., 844 P.2d 303 (Utah 1992).
Johnson v. Morton Thiokol, Inc., 818 P.2d 997 (Utah 1991).
Arnold v. B.J. Titan Services Co., 783 P.2d 541, 543-44 (Utah 1989).
Gilmore v. Community Action Program, 775 P.2d 940, 942 (Utah App. 1989).
Johnson v. Kimberly Clark Worldwide, Inc., 86 F. Supp. 2d 1119, 1121 (D. Utah 2000).

Advisory Committee Notes.

The bracketed sentence need not be given if Instruction 1903 is given.

Staff Notes.

Status. Approved for use: 4/10/2006

1909. Rebutting the "at-will" presumption. Violation of public policy.

I have determined that [describe policy] is a clear and substantial public policy. To establish that he was terminated in violation of this policy [name of plaintiff] must prove that:

(1) the public policy applies to his conduct [describe conduct]; and

[Alternative A] (2) his employment was terminated at least in part because he [did something] [did not do something] protected by the public policy.

If the employee establishes these two points, then the employer may provide evidence that there was a legitimate reason for the termination. If the employer provides evidence of a legitimate reason for the termination, then the employee must prove that the employee's conduct protected by the public policy was a substantial factor in terminating the employee.

[Alternative B] (2) the employee's conduct protected by the public policy was a substantial factor in terminating the employee.

MUJI 1st References.

18.10; 18.11.

References.

Ryan v. Dan's Food Stores, Inc. 972 P.2d 395, 404-405 (Utah 1998).
Gottling v. P.R. Inc., 61 P.3d 989 (Utah 2002).
Barela v. C.R. England & Sons, 197 F.3d 1313, 1316 (10th Cir. 1999).

Advisory Committee Notes.

Alternative A is drafted to conform to the shifting burdens discussed in the caselaw. In the opinion of the committee, that path may be difficult for jurors to follow, especially if the employee and the employer put on their best evidence in the first instance, rather than engage in the back and forth anticipated in the caselaw. Under Alternative B, the jurors would simply weigh all of the evidence produced by all of the parties to decide whether the conduct protected by the policy was a “substantial factor” in terminating the employee. If Alternative A is planned to be used, the judge should explain during the course of the trial the concept of shifting burdens so that jurors understand who is responsible for what.

Whether a claimed public policy is sufficiently clear and substantial to give rise to a claim is a matter of law to be decided by the judge.

Staff Notes.

Status. Approved for use: 4/10/2006

1910. Implied employment contract. New terms.

An at-will employment contract may be modified by writings, conduct, or oral statements of the employer. When an employer communicates to the employee new policies, procedures or other terms or conditions of employment and the employee chooses to continue the employment, a new or modified employment contract is formed including the new terms.

MUJI 1st References.

18.8.

References.

Sanderson v. First Security Leasing Co., 844 P.2d 303, 306-07 (Utah 1992).
Trembly v. Mrs. Fields Cookies, 884 P.2d 1306, 1313 (Utah App. 1994).
Sorenson v. Kennecott-Utah Copper, Corp., 873 P.2d 1141, 1148 (Utah App. 1994).
Johnson v. Kimberly Clark Worldwide, Inc., 86 F. Supp. 2d 1119, 1122 (D. Utah 2000).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 2/13/2006

1911. Breach of employment contract. Just cause.

Termination is for just cause if it is for a fair and honest cause or reason, regulated by good faith as opposed to one that is trivial, capricious, unrelated to business needs or goals, or is pretextual.

MUJI 1st References.

References.

Uintah Basin Medical Center v. Hardy, 110 P.3d 168, 174-75 (Utah App. 2005).

Advisory Committee Notes.

Staff Notes.

Status. Changes from 4/10/2006

1912. Constructive termination.

The termination of employment by an employer may be actual or constructive. The termination is actual when the employer notifies the employee that he has been terminated. The termination is constructive when an employee [resigns/retires] because an employer creates, or knowingly permits to exist, working conditions that are so intolerable that a reasonable person in the employee's position would feel compelled to [resign/retire].

To prove constructive termination, [name of plaintiff] must show that the working conditions were so intolerable at the time he [resigned/retired] that a reasonable person in the same circumstances would feel compelled to [resign/retire]. A compelled [resignation/retirement] is the same as being terminated.

MUJI 1st References.

References.

Sheikh v. Department of Pub. Safety, 904 P.2d 1103, 1007 (Utah App. 1995).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 4/10/2006

1913. Fiduciary duty.

A fiduciary relationship is a relationship in which one, or both, of the parties is required to act solely for the benefit of the other, within the scope of the relationship, with the highest duty of care. The relationship created by a contract is generally not a fiduciary relationship. Similarly, an employer-employee relationship is generally not a fiduciary relationship.

The party claiming the existence of a fiduciary relationship has the burden of proof to show that the relationship is a fiduciary relationship.

To establish a fiduciary relationship the party claiming that relationship must show that the claimed fiduciary owed the other fidelity, confidentiality, honor, trust and dependability above and beyond that of the parties to the average contract.

When the relationship which created the fiduciary duty ends, the fiduciary duty ends as well.

MUJI 1st References.

References.

Semenov v. Hill, 982 P.2d 578 (Utah 1999).
Margulies ex rel. Margulies v. Upchurch, 696 P.2d 1195 (Utah 1985).
Microbiological Research Corp. v. Muna, 625 P.2d 690, 695 (Utah 1981).
Renshaw v. Tracy Loan & Trust Co., 87 Utah 364, 49 P2.d 403, 404 (Utah 1935).
C&Y Corp. v. General Biometrics, 896 P.2d 47, 54 (Utah App. 1995).
Envirotech Corporation v. Callahan, 872 P.2d 487 (Utah App. 1994).
Black's Law Dictionary 640 (7th Ed. 1999).

Advisory Committee Notes.

Staff Notes.

Status.

1914. Damages. Express and implied contract claim.

If an employer has [terminated the employee in breach of] [breached] an express or implied contract, you may award the employee damages. Damages recoverable for breach of contract include both general damages, i.e., those flowing naturally from the breach, and consequential damages, i.e., those reasonably foreseeable by the parties at the time the contract was made.

General damages can be awarded even if no consequential damages are proven; likewise, consequential damages can be awarded even if no general damages are proven.

MUJI 1st References.

18.12.

References.

Mahmood v. Ross, 1999 UT 104, 19, 990 P.2d 933, 937.
Berube v. Fashion Centre, Ltd., 771 P.2d 1033 (Utah 1989).
Beck v. Farmers Ins. Exch., 701 P.2d 795, 801 (Utah 1985).
Erickson v. PI, 73 Cal. App. 3d 850 (1977).
Parker v. Twentieth Century Fox Film Corp., 3 Cal. 3d 176 (1970).

Advisory Committee Notes.

Staff Notes.

Use "economic" and "noneconomic" damages.

Second paragraph is not a point of law that the jury needs to know.

Status.

1915. Damages. General damages.

General damages are those which flow naturally from the employer's breach. In other words, they are those which, from common sense and experience, would naturally be expected to result from the employer's breach of employment contract. They can include [the amount of compensation and benefits that the employee would have received from the employer during the period you find the employment was reasonably certain to have continued, less any amounts that the employer proves the employee received or could have received with reasonable effort from other employment during the same period] [list other items of damage in evidence].

MUJI 1st References.

18.12.

References.

Mahmood v. Ross, 1999 UT 104, 19, 990 P.2d 933, 937 (Utah 1999).
Berube v. Fashion Centre, Ltd., 771 P.2d 1033 (Utah 1989).
Beck v. Farmers Ins. Exch., 701 P.2d 795, 801 (Utah 1985).
Prince v. Peterson, 538 P.2d 1325, 1328 (Utah 1975).
Erickson v. PI, 73 Cal. App. 3d 850 (1977).
Parker v. Twentieth Century Fox Film Corp., 3 Cal. 3d 176 (1970).

Advisory Committee Notes.

Staff Notes.

Status.

1916. Damages. Consequential damages.

Consequential damages are those damages that were within the contemplation of the parties or were reasonably foreseeable by the parties at the time the contract was made. That is, consequential damages are damages, other than lost compensation and benefits, that directly flow from the employer's breach of the employment contract. Although they are designed to place the employee in the same economic position he would have had if the employer had not breached the employment contract, they may reach beyond the bare contract terms.

To recover consequential damages, the employee must prove:

(1) that the consequential damages were caused by the contract breach;

(2) that the consequential damages ought to be allowed because they were foreseeable at the time the parties contracted; and

(3) the amount of the consequential damages within a reasonable certainty.

Although the employee must offer proof within a reasonable certainty of the amount of his loss, he does not need to prove them with absolutely precision.

MUJI 1st References.

18.12.

References.

Kraatz v. Heritage Imports, 2003 UT App 201, 48-49, 53-54, 71 P3d. 188, 199-201.
Mahmood v. Ross, 1999 UT 104, 20, 990 P.2d 933, 937-38.
Berube v. Fashion Centre, Ltd., 771 P.2d 1033 (Utah 1989).
Beck v. Farmers Ins. Exch., 701 P.2d 795, 801 (Utah 1985).
Erickson v. PI, 73 Cal. App. 3d 850 (1977).
Parker v. Twentieth Century Fox Film Corp., 3 Cal. 3d 176 (1970).

Advisory Committee Notes.

Staff Notes.

We have an extensive definition of noneconomic damages in Instruction 2004. Should that be copied here? Or should it and some other damages instructions be considered "general" instructions to be given regardless of the nature of the action?

Status.

1917. Compensatory damages. Public policy wrongful termination.

An employee terminated in violation of public policy is entitled to recover all damages which flow naturally from the employee's termination. In other words, the employee is entitled to recover [the amount of compensation and benefits that the employee would have received from the employer during the period you find the employment was reasonably certain to have continued, less any amounts that the employer proves the employee received or could have received with reasonable effort from other employment during the same period] [list other items of damage in evidence].

An employee is also entitled to recover damages in an amount which will reasonably compensate the employee for the loss and injury suffered as a result of the employer's unlawful conduct. You may award reasonable compensation for the following:

(1) pain, suffering, and physical or emotional distress;

(2) embarrassment and humiliation; and

(3) loss of enjoyment of life; that is, the employee's loss of the ability to enjoy certain aspects of his life as a result of the employer's actions.

You may consider the testimony and the demeanor of the employee in considering and determining a fair allowance for any damages for emotional distress, humiliation, and loss of enjoyment of life. Emotional harm may manifest itself, for example, as sleeplessness, anxiety, stress, depression, marital strain, embarrassment, humiliation, loss of respect, emotional distress, loss of self-esteem, or excessive fatigue. Physical manifestations of emotional harm may also occur, such as ulcers, headaches, skin rashes, gastrointestinal disorders, or hair loss.

In the determination of the amount of the award, it will often be difficult for you to arrive at a precise award. These damages are intangible, and the plaintiff is not required to prove them with precision. It is difficult to arrive at a precise evaluation of actual damage for emotional harm. No opinion of any witness is required as to the amount of such reasonable compensation. Nonetheless, it is necessary to arrive at a reasonable award that is supported by the evidence.

MUJI 1st References.

18.11.

References.

3 Devitt, Blackmar & Wolf, Federal Jury Practice and Instructions, Section 104.6 (4th Ed. 1987).
Block v. R.H. Macy & Co., 712 F.2d 1241, 1245 (8th Cir., 1983).

E.E.O.C. Policy Guide on Compensatory and Punitive Damages Under 1991 Civil Rights Act (B.N.A., 1992) at II(A)(2), as modified.

Stallworth v. Shuler, 777 F.2d 1431 (11th Cir. 1985).

Advisory Committee Notes.

Staff Notes.

The first paragraph simply restates 1919.

Status.

1918. Damages. Breach of the implied covenant of good faith and fair dealing.

If you find, by a preponderance of the evidence, that the employer breached its duty of good faith and fair dealing to the employee, you may award the employee both general damages and a broad array of consequential damages. Damages recoverable for the breach of this duty are damages for those injuries or losses flowing naturally from the breach, and those losses or injuries which were reasonably within the contemplation of, or reasonably foreseeable by, the parties at the time the contract was made.

In awarding these damages, you may award an amount in excess of the contract terms specified in the employment contract. In determining the amount of damages to award, you may consider [the employee's loss of income or profit] [the employee's past and future emotional suffering and mental anguish] [any other detriment naturally flowing from the employer's breach]. However, only those factors that were reasonably foreseeable by the parties and that were proximately caused by the employer's breach may be considered.

MUJI 1st References.

References.

Berube v. Fashion Centre, Ltd., 771 P.2d 1033, 1044, 1050 (Utah 1989).
Beck v. Farmers Ins. Exch., 701 P.2d 795, 801-02 (Utah 1985).
Cook v. Zion's First National Bank 919 P.2d 56 (Utah App. 1996).

Advisory Committee Notes.

Staff Notes.

Status.

1919. Damages. Employee duty to mitigate damages.

An employee who has lost wages as a result of termination has a duty to take steps to minimize the damage by making reasonable efforts to find comparable employment.

If the employee found new employment, the amount earned by the employee must be deducted from any damages awarded to the employee. If the employee, through reasonable efforts, could have found comparable employment, any amount that the employee could have earned in comparable employment must be deducted from the amount of damages awarded to the employee.

The employer has the burden of proving that the employee obtained or might have obtained comparable employment of a similar character.

In order to recover damages suffered due to the employer's actions, the employee is required to show that he or she took reasonable steps to avoid damages. The employee is not required to make every effort possible to avoid the damages.

MUJI 1st References.

18.13.

References.

Angelos v. First Interstate Bank of Utah, 671 P.2d 772 (Utah 1983).
Pratt v. Board of Education of Uintah County School District, 564 P.2d 294 (Utah 1977).

Advisory Committee Notes.

Staff Notes.

Status.

1920. Special damages. Unemployment compensation.

If you decide to award damages to compensate Plaintiff for financial losses, such as lost wages, lost benefits, medical expenses, and other out-of-pocket expenses, you are not to reduce the amount of those damages by the fact that Plaintiff may have received payment from such sources as unemployment insurance, workers' compensation, social security or disability benefits.

MUJI 1st References.

27.3.

References.

Gibbs M. Smith, Inc. v. US Fidelity, & Guaranty Co., 949 P.2d 337, 345 (Utah 1997).
Suniland Corp. v. Radcliffe, 576 P.2d 847, 849 (Utah 1978).
Green v. Denver & Rio Grande Western R. Co., 59 F.3d 1029, 1032 (10th Cir. 1995).
Whatley v. Skaggs Companies, Inc., 707 F.2d 1129, 1138 (10th Cir. 1983).

Advisory Committee Notes.

Staff Notes.

Cite to CACI.

Status.

2000. Tort Damages.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

2001. Introduction to tort damages. Economic and noneconomic damages introduced.

If you decide that [name of defendant]'s fault caused [name of plaintiff]'s harm, you must decide how much money will fairly and adequately compensate [name of plaintiff] for that harm. There are two kinds of damages: economic and noneconomic.

MUJI 1st References.

27.1.

References.

Advisory Committee Notes.

This instruction should be given as a preliminary instruction to all personal injury damage instructions and should be modified to fit the particular situation. The case may be submitted to the jury on special verdict, general verdict, or stipulated liability.

The Advisory Committee recommends that the terms "special" and "general" damages not be used and that the terms "economic" and "noneconomic" damages are more descriptive. But they are intended to as the equivalent of "special" and "general" damages. See, for example, Judd ex rel. Montgomery v. Drezga, 2004 UT 91, P4 (Utah 2004) and Utah Code Section 78-14-7.1.

Staff Notes.

If Para 2 approved, MUJI 1 includes 27.21.

Status. Approved for use: 12/12/2005

2002. Proof of damages.

Before you may award damages, [name of plaintiff] must prove two points.

First, he must prove that damages occurred. The evidence must do more than raise speculation that damages actually occurred; there must be a reasonable probability that [name of plaintiff] suffered damages from [name of defendant]'s fault.

Second, he must prove the amount of damages. The level of evidence required to establish that damages actually occurred is generally higher than that required to establish the amount of damage.

While the standard for determining the amount of damages is not so exacting as the standard for proving that damages actually occurred, there still must be evidence, not just speculation, that provides a reasonable, even though not precise, estimate of the amount of damages.

In other words, if [name plaintiff] has proved that he has been damaged and has established a reasonable estimate of those damages, [name of defendant] may not escape liability because of some uncertainty in the amount of damages.

MUJI 1st References.

References.

Atkin Wright & Miles v. Mountain States Telephone & Telegraph Co., et al., 709 P.2d 330, 336 (Utah 1985).
Renegade Oil, Inc. v. Progressive Cas. Ins. Co., 2004 UT App 356.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 3/13/2006

2003. Economic damages defined.

Economic damages are the amount of money that will fairly and adequately compensate [name of plaintiff] for measurable losses of money or property caused by [name of defendant]'s fault.

MUJI 1st References.

27.1.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 12/12/2005

2004. Noneconomic damages defined.

Noneconomic damages are the amount of money that will fairly and adequately compensate [name of plaintiff] for losses other than economic losses.

Noneconomic damages are not capable of being exactly measured, and there is no fixed rule, standard or formula for them. Noneconomic damage must still be awarded even though they may be difficult to compute. It is your duty to make this determination with calm and reasonable judgment. The law does not require the testimony of any witness to establish the amount of noneconomic damages.

In awarding noneconomic damages, among the things that you may consider are:
(1) the nature and extent of injuries;
(2) the pain and suffering, both mental and physical;
(3) the extent to which [name of plaintiff] has been prevented from pursuing his ordinary affairs;
(4) the degree and character of any disfigurement;
(5) the extent to which [name of plaintiff] has been limited in the enjoyment of life; and
(6) whether the consequences of these injuries are likely to continue and for how long.

While you may not award damages based upon speculation, the law requires only that the evidence provide a reasonable basis for assessing the damages but does not require a mathematical certainty.

I will now instruct you on particular items of economic and noneconomic damages presented in this case.

MUJI 1st References.

27.2.

References.

C.S. v. Nielson, 767 P.2d 504 (Utah 1988).
Judd v. Rowley's Cherry Hill Orchards, Inc., 611 P.2d 1216 (Utah 1980).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 12/12/2005

2005. Economic damages. Medical care and related expenses.

Economic damages include reasonable and necessary expenses for medical care and other related expenses. You should award the value of those expenses incurred in the past and of those that will probably be incurred in the future.

MUJI 1st References.

27.3.

References.

Judd v. Rowley's Cherry Hill Orchards, Inc., 611 P.2d 1216 (Utah 1980).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/1/2005

2006. Economic damages. Lost earnings. [Lost earning capacity.]

Economic damages include past and future lost earnings, including lost benefits, [and lost earning capacity].

Past lost earnings are calculated from the date of the harm until the trial. [Future lost earnings are calculated from the date of trial forward.]

[Lost earning capacity is not the same as lost earnings. Lost earning capacity means the lost potential to earn increased income. In determining lost earning capacity, you should consider:

(1) [name of plaintiff]'s actual earnings;
(2) his work before and after [describe event];
(3) what he was capable of earning had he not been injured; and
(4) any other facts that relate to employment.]

MUJI 1st References.

27.4; 27.5.

References.

Cohn v. J. C. Penney Co., 537 P.2d 306 (Utah 1975).
Dalebout v. Union Pacific R. Co., 1999 UT App 151, 980 P.2d 1194, 1200 (Utah App. 1999).
Corbett v. Seamons dba Big O Tire, 904 P.2d 229, 232, N.2 (Utah App. 1995).
Utah Code Section 78-27-44.

Advisory Committee Notes.

The judge should instruct on lost earning capacity only if there is evidence to support the loss, such as injury to a student who may not be working at the time of the injury but whose prospects for future employment are proved.

The verdict form should distinguish between lost earnings and lost earning capacity before and after the trial. The former accrue interest from the date of the injury. The latter do not.

Staff Notes.

Status. Approved for use: 12/12/2005

2007. Economic damages. Loss of household services.

Economic damages include loss of household services. To recover damages for this loss, [name of plaintiff] must prove the reasonable value of the household services that he has been or will be unable to do since the harm.

MUJI 1st References.

References.

Regal Ins. Co. v. Bott, 2001 UT 71.
Wilde v. Mid-Century Ins. Co., 635 P.2d 417 (Utah 1981).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/13/2005

2008. Economic damages. Injury to personal property.

Economic damages include injury to or destruction of [name of plaintiff]'s [item of personal property].

The damages to be awarded for injury to personal property are the difference in the fair market value of the item immediately before and immediately after the injury, unless the property can be repaired for a lesser amount. If the property can be repaired for a lesser amount, then the damages would be the reasonable cost of repair.

If you find that the repairs do not restore the item to the same value as before the injury, you may award the difference between its fair market value before the injury and its fair market value after the repairs, plus the reasonable cost of making the repairs. The total amount awarded must not exceed the [item of personal property]'s fair market value before the injury occurred.

MUJI 1st References.

27.13; 27.14.

References.

Knickerbocker v. Cannon, 912 P.2d 969 (Utah 1996).
Winters v. Charles Anthony, Inc., 586 P.2d 453 (Utah 1978).
Ault v. Dubois, 739 P.2d 1117 (Utah App. 1987).

Advisory Committee Notes.

If the property has no fair market value, use the first paragraph only.

Staff Notes.

Status. Approved for use: 11/14/2005

2009. Economic damages. Injury to real property.

Economic damages include injury to [name of plaintiff]'s real property.

The damages to be awarded for injury to real property are the difference in the fair market value of the land immediately before and immediately after the injury, unless the property can be repaired for a lesser amount. If the property can be repaired for a lesser amount, then the damages would be the reasonable cost of repair.

[In addition, if the evidence establishes that the repaired property will not return to its original value because of a lingering negative public perception that was caused by the injury, you may award stigma damages for any reduction in the value of the property.]

MUJI 1st References.

27.16; 27.17

References.

Walker Drug vs. La Sal Oil, 972 P.2d 1238 (Utah 1998).
Thorsen v. Johnson, 745 P.2d 1243 (Utah 1987).
Pehrson v. Saderup, 28 Utah 2d 77, 498 P.2d 648 (1972).
Brereton v. Dixon, 20 Utah 2d 64, 433 P.2d 3 (1967).
Henderson v. For-Shor Co., 757 P.2d 465 (Utah App. 1988).
Ault v. Dubois, 739 P.2d 1117 (Utah App. 1987).

Advisory Committee Notes.

The sentence on "stigma damages" is to be given only if there is evidence to support a claim of lingering negative public perception.

Staff Notes.

Status. Approved for use: 1/9/2006

2010. "Fair market value" defined.

Fair market value is the highest price that a willing buyer would have paid to a willing seller, assuming that there was no pressure on either one to buy or sell; and that the buyer and seller were fully informed of the condition and quality of the [item of personal property].

MUJI 1st References.

27.19.

References.

Knickerbocker v. Cannon, 912 P.2d 969, 982 (Utah 1996).
Winters v. Charles Anthony, Inc., 586 P.2d 453 (Utah 1978).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 11/14/2005

2011. Economic damages. Loss of use of personal property.

To compensate [name of plaintiff] for the loss of use of [item of personal property], you may award [name of plaintiff] the amount that you determine will restore him to the same position he was in prior to the damage. You may consider the following factors [as applicable]:

(1) The rental value of the [item of personal property].
(2) The lost income, meaning the income [name of plaintiff] would likely have earned through using the [item of personal property].
(3) What [name of plaintiff] reasonably spent to decrease the damage.

MUJI 1st References.

27.15.

References.

Castillo v. Atlanta Casualty Co., 939 P.2d 1204, 1209 (Utah App. 1997).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 11/14/2005

2012. Noneconomic damages. Loss of consortium.

Noneconomic damages include loss of consortium. When a defendant's negligence causes a significant permanent injury that substantially changes a plaintiff's lifestyle and leaves him incapable of doing the things that he did before the injury, the plaintiff's spouse may separately claim damages for loss of consortium. Loss of consortium is loss of the benefits that one spouse expects to receive from the other, such as companionship, cooperation, affection, aid, financial support and sexual relations.

[You must decide whether [name of spouse] was [name of plaintiff]'s spouse at the time of [name of plaintiff]'s injury. "Spouse" means the legal relationship established between a man and a woman as recognized by the laws of Utah.]

If you decide that [name of plaintiff] has no claim against [name of defendant], then [name of spouse] also has no claim. Otherwise, you must decide whether [name of plaintiff] has suffered a significant permanent injury that substantially changes his lifestyle and how much money will fairly and adequately compensate [name of spouse] for that harm.

Then you must allocate fault as I have instructed you in Instruction 211 including [name of spouse] in your allocation. If you decide that [name of spouse]'s fault of is 50% or greater, [name of spouse] will recover nothing for loss of consortium. As with other damages, do not reduce the award by [name of plaintiff]'s and [name of spouse]'s percentage of fault. I will make that calculation later.

MUJI 1st References.

References.

Utah Code Section 30-2-11.
Black's Law Dictionary, 8th Edition.

Advisory Committee Notes.

Often there is no dispute about whether the plaintiff's spouse is the spouse at the time of the injury. If there is, the jury should be instructed on this issue as well.

The legislature has determined that the following are significant permanent injuries that substantially change a person's lifestyle:
(1) a partial or complete paralysis of one or more of the extremities;
(2) significant disfigurement; or
(3) incapability of the person of performing the types of jobs the person performed before the injury.
There may be others.

Utah does not recognize a cause of action for loss of filial consortium. Boucher v. Dixie Medical Ctr., 850 P.2d 1179, 1182 (Utah 1992).

Staff Notes.

Status.

2013. Wrongful death claim. Adult. Factors for deciding damages.

In determining damages, you shall award an amount which will compensate [name of plaintiff] for the loss suffered due to [name of decedent]'s death. You shall base the amount of your award on all circumstances existing at the time of the [name of decedent]'s death which establish [name of plaintiff]'s loss, including the following:

(1) The loss of financial support, past and future, that [name of plaintiff] would likely have received, or been entitled to receive, from [name of decedent] had [name of decedent] lived.

(2) The loss of love, companionship, society, comfort, care, protection and affection which [name of plaintiff] has sustained and will sustain in the future.

(3) The age, health and life expectancies of [name of decedent] and [name of plaintiff] immediately prior to the death.

(4) The loss or reduction of inheritance from [name of decedent] [name of plaintiff] is likely to suffer because of [name of decedent]'s death.

(5) Any other evidence of assistance or benefit that [name of plaintiff] would likely have received had [name of decedent] lived.

[In determining this award, you are not to consider any pain or suffering of [name of decedent] prior to his death.]

MUJI 1st References.

27.9.

References.

Utah Code Sections 78-11-7 through 78-11-12.
Oxendine v. Overturf, 1999 UT 4, 973 P.2d 417 (1999).
In re Behm's Estate, 117 Utah 151, 213 P.2d 657 (1950).
Morrison v. Perry, 104 Utah 151, 140 P.2d 772 (1943).
Allen v. United States, 558 F. Supp. 247 (D. Utah 1984).
Platis v. United States, 288 F. Supp. 254 (D. Utah 1968), aff'd, 409 F.2d 1009 (10th Cir. 1969).

Advisory Committee Notes.

This instruction applies to claims for wrongful death of an adult under Utah Code Section 78-11-7. It should be given along with Instruction 2015 or 2016 in cases

involving both wrongful death claims and survival claims under Utah Code Section 78-11-12, and in such cases the bracketed provision should be deleted.

In appropriate cases, the court may also include a specific reference in Paragraph (5) to reasonable funeral and burial expenses, the decedent's medical expenses resulting from the subject event causing the death, and damage to or destruction of the decedent's personal property.

The judge should include only those paragraphs for which is evidence of loss.

Staff Notes.

Status. Approved for use: 10/17/2005

2014. Wrongful death claim. Minor. Factors for deciding damages.

In determining damages, you shall award an amount which will compensate [name of plaintiff] for the loss suffered due to [name of decedent]'s death. You shall base the amount of your award on all circumstances existing at the time of the [name of decedent]'s death which establish [name of plaintiff]'s loss, including the following:

(1) The loss of financial support, past and future, that [name of plaintiff] would likely have received, or been entitled to receive, from [name of decedent] had [name of decedent] lived. This amount should be reduced by the costs that [name of plaintiff] would likely have incurred to support [name of decedent] had the child survived, until the child reached 18 years of age.

(2) The loss of love, companionship, society, comfort, care, protection and affection which [name of plaintiff] has sustained and will sustain in the future.

(3) The age, health and life expectancies of [name of decedent] and [name of plaintiff] immediately prior to the death.

(4) The loss of inheritance from [name of decedent] [name of plaintiff] is likely to suffer because of [name of decedent]'s death.

(5) Any other evidence of assistance or benefit that [name of plaintiff] would likely have received had [name of decedent] lived.

(6) The reasonable and necessary expenses incurred by [name of plaintiff] for [name of decedent] for any medical care because of [circumstances causing death].

(7) The reasonable expenses that were incurred for [name of decedent]'s funeral and burial.

[In determining this award, you are not to consider any pain or suffering of [name of decedent] prior to his death.]

MUJI 1st References.

27.10.

References.

Utah Code Sections 78-11-7 through 78-11-12.
such damages
Jones v. Carvell, 641 P.2d 105 (Utah 1982)
In re Behm's Estate, 117 Utah 151, 213 657 (1950).
Allen v. United States, 588 F. Supp. 247 (D. Utah 1984).

Platis v. United States, 288 F. Supp. 254 (D. Utah 1968), aff'd, 409 F.2d 1009 (10th Cir. 1969).

Advisory Committee Notes.

This instruction applies to claims for wrongful death of a minor under Utah Code Section 78-11-6. It should be given along with Instruction 2015 or 2016 in cases involving both wrongful death claims and survival claims under Utah Code Section 78-11-12, and in such cases the bracketed provision should be deleted.

Staff Notes.

Status. Approved for use: 9/12/2005

2015. Survival claim.

If [name of decedent] died from injuries caused by [name of defendant]'s fault, then you should award economic and noneconomic damages for the period of time that he lived after the injuries.

MUJI 1st References.

References.

Utah Code Sections 78-11-7 through 78-11-12.
In re Behm's Estate, 117 Utah 151, 213 657 (1950).
Allen v. United States, 558 F. Supp. 247 (D. Utah 1984).
Platis v. United States, 288 F. Supp 254 (D. Utah 1968), aff'd, 409 F.2d 1009 (10th Cir. 1969).

Advisory Committee Notes.

There is no Utah law at the time this was drafted regarding the meaning of "survival," and whether the decedent must be conscious to bring a survival action.

Under comparative negligence statute, any negligence of decedent is, in effect, imputed to wrongful death plaintiff: thus, if decedent is found to be more than 50% negligent all recovery is denied. Kelson v. Salt Lake County, 784 P.2d 1152 (Utah 1989)

Staff Notes.

Status. Approved for use: 12/12/2005

2016. Survival claim. Disputed cause of death.

If [name of decedent]'s death was not caused by [name of defendant]'s fault, you may award only [name of decedent]'s economic damages caused by that fault. You may not award noneconomic damages.

MUJI 1st References.

References.

Utah Code Section 78-11-12(1)(b).

Advisory Committee Notes.

This instruction applies only to a claim made under Utah Code Section 78-11-12(1)(b).

Staff Notes.

Status. Approved for use: 12/12/2005

2017. Susceptibility to injury.

A person who may be more susceptible to injury than someone else is still entitled to recover the full amount of damages that were caused by [name of defendant]'s fault. In other words, the amount of damages should not be reduced merely because [name of plaintiff] may be more susceptible to injury than someone else.

MUJI 1st References.

27.6.

References.

Tingey v. Christensen, 1999 UT 68, 987 P.2d 588 (Utah 1999).
Brunson v. Strong, 17 Utah 2d 364, 412 P.2d 451 (1966).
Biswell v. Duncan, 742 P.2d 80 (Utah App. 1987).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 6/13/2005

2018. Aggravation of symptomatic pre-existing conditions.

A person who has a [physical, emotional, or mental] condition before the time of [describe event] is not entitled to recover damages for that condition or disability. However, the injured person is entitled to recover damages for any aggravation of the pre-existing condition that was caused by [name of defendant]'s fault, even if the person's pre-existing condition made him more vulnerable to physical [or emotional] harm than the average person. This is true even if another person may not have suffered any harm from the event at all.

When a pre-existing condition makes the damages from injuries greater than they would have been without the condition, it is your duty to try to determine what portion of the [specific harm] to [name of plaintiff] was caused by the pre-existing condition and what portion was caused by the [describe event].

If you are not able to make such an apportionment, then you must conclude that the entire [specific harm] to [name of plaintiff] was caused by [name of defendant]'s fault.

MUJI 1st References.

27.6.

References.

Robinson v. All-Star Delivery, 992 P.2d 969, 972 (Utah 1999).
Tingey v. Christensen, 1999 UT 68, 987 P.2d 588 (Utah 1999).
Brunson v. Strong, 17 Utah 2d 364, 412 P.2d 451 (1966).

Advisory Committee Notes.

This instruction is not intended to suggest that the verdict form include a line-item allocation of what part of the harm can be apportioned to the pre-existing condition, and what part to the defendant's fault. That question is answered by the jury's award of damages and should not be confused with allocation of comparative fault.

Staff Notes.

Status. Approved for use: 9/12/2005

2019. Aggravation of dormant pre-existing condition.

A person who has a [physical, emotional, or mental] condition before the time of [describe event] is not entitled to recover damages for that pre-existing condition or disability.

However, if a person has a pre-existing condition that does not cause pain or disability, but [describe event] causes the person to suffer [describe the specific harm], then he may recover all damages caused by the event.

MUJI 1st References.

27.7.

References.

Ortiz v. Geneva Rock Products, Inc., 939 P.2d 1213, (Utah App. 1997).
Turner v. General Adjustment Bureau, Inc., 832 P.2d 62, (Utah App. 1992).
Biswell v. Duncan, 742 P.2d 80 (Utah App. 1987).

Advisory Committee Notes.

Unlike Instruction 2018, this instruction is designed for asymptomatic conditions that are aggravated by an injury.

Staff Notes.

Status. Approved for use: 10/17/2005

2020. Mitigation of damages.

[Name of plaintiff] has a duty to exercise reasonable diligence and ordinary care to minimize the damages caused by [name of defendant]'s fault. Any damages awarded to [name of plaintiff] should not include those that [name of plaintiff] could have avoided by taking reasonable steps. It is [name of defendant]'s burden to prove that [name of plaintiff] could have minimized his damages, but failed to do so. If [name of plaintiff] made reasonable efforts to minimize his damages, then your award should include the amounts that he reasonably incurred to minimize them.

MUJI 1st References.

27.8.

References.

Gibbs M. Smith, Inc. v. United States Fid. & Guar. Co., 949 P.2d 337 (Utah 1997).
Gill v. Timm, 720 P.2d 1352 (Utah 1986).

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 9/12/2005

2021. Present cash value.

If you decide that [name of plaintiff] is entitled to damages for future economic losses, then the amount of those damages must be reduced to present cash value. This is because any damages awarded would be paid now, even though the plaintiff would not suffer the economic losses until some time in the future. Money received today would be invested and earn a return or yield.

To reduce an award for future damages to present cash value, you must determine the amount of money needed today that, when reasonably and safely invested, will provide [name of plaintiff] with the amount of money needed to compensate [name of plaintiff] for future economic losses. In making your determination, you should consider the earnings from a reasonably safe investment.

MUJI 1st References.

27.11.

References.

Gallegos ex rel. Rynes v. Dick Simon Trucking, Inc., 2004 UT App 322, 110 P.3d 710, cert. denied (Utah 2005).
Bennett v. Denver & Rio Grande Western R. Co., 213 P.2d 325 (Utah 1950).

Advisory Committee Notes.

Utah law is silent on whether inflation should be taken into account in discounting an award for future damages to present value. The United States Supreme Court, however, has ruled that inflation should be taken into account when discounting to present value. See Jones & Laughlin Steel Corp. v. Pfeifer, 462 U.S. 523 (1983).

Utah law is silent on whether plaintiff or defendant bears the burden of proving present cash value. Other jurisdictions are split. Some courts treat reduction to present value as part of the plaintiff's case in chief. See, e.g., Abdulghani v. Virgin Islands Seaplane Shuttle, Inc., 746 F. Supp. 583 (D. V.I. 1990); Steppi v. Stromwasser, 297 A.2d 26 (Del. Super. Ct. 1972). Other courts treat reduction to present value as a reduction of the plaintiff's damages akin to failure to mitigate, on which the defendant bears the burden of proof. See, e.g., Energy Capital Corp. v. United States, 47 Fed. Cl. 382 (Fed. Cl. 2000), aff'd in part, rev'd in part on other grounds, 302 F.3d 1314 (Fed. Cir. 2002); CSX Transp., Inc. v. Casale, 441 S.E.2d 212 (Va.1994). There is a good discussion of the issue in Lewin Realty III, Inc. v. Brooks, 771 A.2d 446 (Md. Ct. Spec. App. 2001), aff'd, 835 A.2d 616 (Md. 2003), holding the burden to be on the defendant. It cites Miller v. Union P.R. Co., 900F.2d 223, 226 (10th Cir.1990), as support.

There are several Utah cases holding that the burden is on the defendant to show that a damage award should be reduced, but they deal with failure to mitigate, not reduction to present value. See Covey v. Covey, 2003 UT App 380, 29, 80 P.3d 553; John Call Eng'g, Inc. v. Manti City Corp., 795 P.2d 678, 680 (Utah Ct. App. 1990).

Expert testimony on annuities as relevant to present value of future damages is permitted. Gallegos ex rel. Rynes v. Dick Simon Trucking, Inc., 2004 UT App 322, 110 P.3d 710, cert. denied (Utah 2005). Annuity tables and their related data also are permitted. See Schlatter v. McCarthy, 113 Utah 543, 196 P.2d 968 (1948). But Utah law is silent on whether expert testimony, government tables or other evidence is necessary before a jury is charged to calculate present cash value. Other jurisdictions require evidence before the jury can be instructed to calculate present cash value. See Schiernbeck v. Haight 7 Cal.App.4th 869, 877, 9 Cal.Rptr.2d 716 (1992), citing Wilson v. Gilbert, 25 Cal.App.3d 607, 614, 102 Cal.Rptr. 31 (1972).

Staff Notes.

Status. Approved for use: 1/9/2006

2022. Life expectancy.

According to mortality tables, a person of [name of plaintiff]'s age, race, and gender is expected to live ____ more years. You may consider this fact in deciding the amount of future damages. A life expectancy is merely an estimate of the average remaining life of all persons in our country of a given age, race, and gender, with average health and exposure to danger. Some people live longer and others die sooner. You may also consider all other evidence bearing on the expected life of [name of plaintiff], including his occupation, health, habits, life style, and other activities.

MUJI 1st References.

27.12.

References.

Advisory Committee Notes.

The purpose for this instruction is to assist the jury in determining future damages. Therefore, life expectancy is determined from the date of trial, not the date of injury.

Staff Notes.

Status. Approved for use: 9/12/2005

2023. Effect of settlement.

[Name of plaintiff] has settled his claim against [name of settling party]. Your award of damages to [name of plaintiff] should be made without considering what he received under this settlement. After you have returned your verdict, I will make the appropriate adjustment to your award of damages.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 10/17/2005

2024. Collateral source payments.

You shall award damages in an amount that fully compensates [name of plaintiff]. Do not speculate on or consider any other possible sources of benefit [name of plaintiff] may have received. After you have returned your verdict, I will make whatever adjustments may be appropriate.

MUJI 1st References.

14.16.

References.

Mahana v. Onyx Acceptance Corp., 2004 UT 59 P37, P39, 96 P.3d 893, 901.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 11/14/2005

2025. Arguments of counsel not evidence of damages.

You may consider the arguments of the attorneys to assist you in deciding the amounts of damages, but their arguments are not evidence.

MUJI 1st References.

2.4

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: 10/17/2005

2100. Commercial Contracts. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

2200. Construction Contracts. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

2300. Sales Contracts and Secured Transactions. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

2400. Insurance Litigation. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

2500. Wills. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

2600. Eminent Domain and Condemnation. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

2700. Liability of Officers, Directors, Partners and Insiders. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use:

2800. Vicarious Liability. - Reserved.

MUJI 1st References.

References.

Advisory Committee Notes.

Staff Notes.

Status. Approved for use: